

May 12, 2011

Bill Pope
Business Agent
Operating Engineers Local Union No. 3
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: City's Last, Best, and Final Offer

Dear Bill:

We appreciate the hard work demonstrated by the International Union of Operating Engineers Local Union No. 3 (OE#3) during the 2011 negotiations for a successor Memorandum of Agreement (MOA). Both the City and OE#3 have each put forth a tremendous amount of time and effort towards these negotiations. We began the negotiations in February 2011, met approximately fourteen (14) times, and engaged in the mediation process on May 4, 2011, and May 11, 2011.

Unfortunately, despite these efforts, we were unable to reach an agreement.

Therefore, we are providing you with the City's alternate Last, Best, and Final proposals. As you will see, the City is open to either a one-year or a two-year agreement with slightly different parameters in each. It is the City's intent that the savings from either of these proposals would be used to preserve services and jobs that would otherwise be eliminated in Fiscal Year 2011-2012. Though both of these proposals help the City address its \$115 million deficit, neither of these proposals guarantee that there will not be layoffs in Fiscal Year 2011-2012.

If OE#3 does not accept either of the City's offers, it is our intent to take the one-year Last, Best, and Final Offer for City Council approval in open session on May 31, 2011. Please let us know by May 24, 2011.

Please let me know if you have any questions.

Sincerely,



Jennifer Schembri
Senior Executive Analyst

Enclosure

**CITY OF SAN JOSE AND OE#3
LAST, BEST, AND FINAL OFFER
ALTERNATIVE A**

PERIOD OF MEMORANDUM OF AGREEMENT

July 1, 2011 – June 30, 2012 (See attached)

WAGES

See attached

HEALTHCARE COST SHARING

See attached

HEALTHCARE CO-PAYS

See attached

HEALTH AND DENTAL IN LIEU

See attached

HEALTHCARE DUAL COVERAGE

See attached

SICK LEAVE PAYOUT

See attached

DISABILITY LEAVE SUPPLEMENT

See attached

SALARY STEP STRUCTURE

See attached

OVERTIME CALCULATION

See attached

SUBSIDY FOR PUBLIC TRANSIT

See attached

SIDE LETTERS

- Retirement Benefits for current and new employees (See attached)
- Layoff (See attached)
- Supplemental Retiree Benefit Reserve (SRBR) (See attached)

PERIOD OF MEMORANDUM OF AGREEMENT

Proposed Language:

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective July 1, 2011, except where otherwise provided, and shall remain in effect through June 30, 2012. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

This language is intended to replace the language in Article 1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – WAGES

Proposed Language:

- 5.1 Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to OE#3 (Union Code 06/061) shall be decreased by approximately 10%. This will result in the top and bottom of the range of all classifications represented by OE#3 being 10% lower. All employees will receive a 10% base pay reduction.

This language is intended to replace the language in Article 5.1 of the OE#3 Memorandum of Agreement

Note:

The City will “undo” one-time and ongoing additional employee retirement contributions that offset the City’s retirement contribution rates and stop “one-time” base rate concessions made in Fiscal Year 2010-2011 effective June 25, 2011.

CITY PROPOSAL – HEALTHCARE COST SHARING

Proposed Language:

- 5.5.1 Effective pay date July 1, 2011, the City pays eighty-five percent (85%) of the cost of the lowest priced plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced plan. If the employee selects a plan other than the lowest priced plan, the employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

This language is intended to replace the language in Article 5.5.1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTHCARE CO-PAYS

Proposed Language:

5.5.2 Effective pay date July 1, 2011, a \$25 Co-pay plan shall be implemented for all HMO plans, including the following changes:

- a. Office Visit Co-pay shall be increased to \$25
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name
- c. Emergency Room Co-pay shall be increased to \$100
- d. Inpatient/Outpatient procedure Co-pay shall be increased to \$100

This language is intended to replace the language in Article 5.5.2 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTH AND DENTAL IN LIEU

Proposed Language:

5.7.1 Effective pay date July 1, 2011, employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following per pay period:

	Health in-lieu	Dental in-lieu
If eligible for family coverage	\$221.84	\$19.95
If NOT eligible for family coverage	\$89.09	\$19.95

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

This language is intended to replace the language in Article 5.7.1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTHCARE DUAL COVERAGE

Health Insurance Proposed Language:

- 5.5.4 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added as Article 5.5.4 of the OE#3 Memorandum of Agreement

Dental Insurance Proposed Language:

- 5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added as Article 5.6.3 of the OE#3 Memorandum of Agreement

CITY PROPOSAL - SICK LEAVE PAYOUT

Effective January 1, 2012, no employee shall be eligible for a sick leave payout.

With this proposal, Article 18.2 & 18.3 of the OE#3 Memorandum of Agreement shall be eliminated.

CITY PROPOSAL – DISABILITY LEAVE SUPPLEMENT

ARTICLE 19 DISABILITY LEAVE

- 19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.
- 19.2 Eligibility for Disability Leave Supplement. A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period. DLS will also be paid for intermittent absences for medical appointments and physical therapy pursuant to the resolution of grievance #624 (2/15/85).
- 19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.
- 19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from:
- 1) an act of gross negligence of such employee;
 - 2) any work voluntarily undertaken by employee from which the employee has been prohibited from engaging in as determined by a City physician, prior to the date of injury.
- 19.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
- 1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period;
 - 2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
 - 3) Effective June 26, 2011, an employee will be eligible to receive DLS for a maximum of three (3) months (or 520 hours if not continually absent) for any

current of future work-related injury or illness. Any employee who has exceeded three (3) months (or 520 hours if not continually absent) as of June 26, will no longer be eligible to receive DLS. Nine (9) calendar months (274 days) or 1560 hours, if not continually absent following date of injury.

- 19.6.1 Time Limit for DLS Eligibility. Effective June 26, 2011, after 520 hours of DLS After 1560 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.
- 19.6.2 Suspension of Disability Leave Supplement. The City may suspend Disability Leave Supplement in lieu of or as part of a disciplinary suspension, demotion or pay reduction. The City shall proceed with due process requirement, unless the employee is non-ambulatory and is determined by a physician to be medically unable to participate. An employee who is unable to participate may send a representative in their absence.
- 19.7 Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources or designee is responsible for determining eligibility for DLS. In making this determination, the Director or designee, may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the injury or illness will last, and proof of other relevant matters as determined by the Director or designee. The Director or designee may require the employee to submit to a medical examination by a physician selected by the City.
- 19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this article and the integration of Sick Leave, accrued vacation, and compensatory time off with Workers' Compensation provided for in Article 18.1.2.3 may be considered to have voluntarily separated from employment.
- 19.10 Integration. After the maximum time limit specified in Article 19.6, the integration of an employee's available leave will occur in the following order: (1) accrued Vacation hours, (2) earned Compensatory Time once Vacation has been exhausted, and (3) accrued Sick Leave once Vacation and Compensatory Time have both been exhausted.
- In no event shall an employee receive an amount, including any Workers' Compensation Temporary Disability payments, in excess of the employee's regular base salary.

CITY PROPOSAL – SALARY STEP STRUCTURE

Proposed Language:

5.1.1 Salary Steps. Effective June 26, 2011, the salary steps for all classifications represented by OE#3 will change from approximately 5% between each step to approximately 2.5%. This will result in an increase in the number of steps in the pay range.

This language is intended to be added to Article 5.1 in the OE#3 Memorandum of Agreement

CITY PROPOSAL – OVERTIME CALCULATION

Proposed Language:

- 6.6 Hours assigned and worked in excess of forty (40) hours per week shall be compensated by overtime pay or compensatory time at 1.5 times the hourly rate for the number of overtime hours worked. Paid time off shall not be considered time worked for the purpose of calculating eligibility for overtime.
- 6.6.1 Notwithstanding 6.6 above, any full-time employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours. Notwithstanding 6.1, to be eligible for double time, paid absences shall not count towards determining eligibility for overtime at the 2.0 rate.
- 6.6.2 Double Backs. All double-backs (two non-consecutive shifts of at least eight (8) hours each within a 24-hour period) at the Water Pollution Control Plant will be compensated by a four hour premium (recorded as 1.0 OOT). This provision applies only to employees who work in a twenty-four (24) hour operation at the Water Pollution Control Plant and excludes employees who voluntarily shift trade, but includes relief personnel and shift changes.

This language is intended to replace the language in Articles 6.6, 6.6.1, & 6.6.2 of the OE#3 Memorandum of Agreement.

With this proposal, Article 6.11 shall be eliminated

PUBLIC TRANSIT SUBSIDY (ECO-PASS AND SUBSIDIZED COMMUTER CHECK VOUCHER PROGRAM)

ECO-Pass

After calendar year 2011, the City will no longer provide employees an ECO-Pass. This means that any employee in possession of a 2011 ECO-Pass provided by the City may continue its use through calendar year 2011. Beginning calendar year 2012, the City will cease providing an ECO-Pass.

Commuter Check Program

Upon exhaustion of the current supply of Commuter Check Vouchers, the Vouchers will no longer be available to employees for purchase from the City. This means that the subsidized Commuter Check Voucher Program is eliminated after the current supply of Commuter Check Vouchers are exhausted.

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

RETIREMENT REFORM

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.

Either the City or OE#3 may provide notice to the other of its request to continue to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or OE#3 receives notice from the other. The City and OE#3 shall continue to meet and confer in good faith in an effort to reach a mutual agreement.

If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. In such event, neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor agreement between the City and OE#3.

FOR THE CITY:

FOR OE#3:

Jennifer Schembri Date
Office of Employee Relations

Bill Pope Date
International Union of Operating
Engineers, Local No. 3 (OE#3)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

LAYOFF

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) may provide notice to the other of its request to meet and confer on modifications to the City's layoff process and procedure, including the provisions of the Layoff article in the Memorandum of Agreement. Upon such notice, the parties shall meet within ten (10) calendar days after the City or OE#3 receives notice from the other. The City and OE#3 shall meet and confer in good faith in an effort to reach a mutual agreement.

If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.

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Office of Employee Relations

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**CITY OF SAN JOSE AND OE#3
LAST, BEST, AND FINAL OFFER
ALTERNATIVE B**

PERIOD OF MEMORANDUM OF AGREEMENT

July 1, 2011 – June 30, 2013 (See attached)

WAGES

See attached

HEALTHCARE COST SHARING

See attached

HEALTHCARE CO-PAYS

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See attached

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DISABILITY LEAVE SUPPLEMENT

See attached

SALARY STEP STRUCTURE

See attached

SUBSIDY FOR PUBLIC TRANSIT

See attached

SIDE LETTERS

- Retirement Benefits for current and new employees (See attached)
- Layoff (See attached)
- Supplemental Retiree Benefit Reserve (SRBR) (See attached)
- Sick Leave Payout (See attached)

PERIOD OF MEMORANDUM OF AGREEMENT

Proposed Language:

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

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It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current contract terminates.

This language is intended to replace the language in Article 1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – WAGES

Proposed Language:

- 5.1 Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to OE#3 (Union Code 06/061) shall be decreased by approximately 10%. This will result in the top and bottom of the range of all classifications represented by OE#3 being 10% lower. All employees will receive a 10% base pay reduction.

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Note:

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CITY PROPOSAL – HEALTHCARE COST SHARING

Proposed Language:

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This language is intended to replace the language in Article 5.5.1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTHCARE CO-PAYS

Proposed Language:

5.5.2 Effective pay date July 1, 2011, a \$25 Co-pay plan shall be implemented for all HMO plans, including the following changes:

- a. Office Visit Co-pay shall be increased to \$25
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- d. Inpatient/Outpatient procedure Co-pay shall be increased to \$100

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Proposed Language:

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If eligible for family coverage	\$221.84	\$19.95
If NOT eligible for family coverage	\$89.09	\$19.95

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

This language is intended to replace the language in Article 5.7.1 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – HEALTHCARE DUAL COVERAGE

Health Insurance Proposed Language:

5.5.4 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added as Article 5.5.4 of the OE#3 Memorandum of Agreement

Dental Insurance Proposed Language:

5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee or retiree.

This language shall be added as Article 5.6.3 of the OE#3 Memorandum of Agreement

CITY PROPOSAL – DISABILITY LEAVE SUPPLEMENT

ARTICLE 19 DISABILITY LEAVE

- 19.1 Disability Leave Supplement (DLS). Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary. Effective June 24, 2012, employees shall no longer be eligible to receive DLS.
- 19.2 Eligibility for Disability Leave Supplement. A full-time employee who is required to be absent from work due to a job-related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period. DLS will also be paid for intermittent absences for medical appointments and physical therapy pursuant to the resolution of grievance #624 (2/15/85).
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- 1) an act of gross negligence of such employee;
 - 2) any work voluntarily undertaken by employee from which the employee has been prohibited from engaging in as determined by a City physician, prior to the date of injury.
- 19.5 Ineligibility if Offer and Decline of Modified Duty. DLS shall not be provided if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
- 1) the time the employee is medically required to be absent due to a work-related injury or illness, after the required three day waiting period;
 - 2) the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
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current of future work-related injury or illness. Any employee who has exceeded three (3) months (or 520 hours if not continually absent) as of June 26, will no longer be eligible to receive DLS. ~~Nine (9) calendar months (274 days) or 1560 hours, if not continually absent following date of injury.~~

- 19.6.1 Time Limit for DLS Eligibility. Effective June 26, 2011, after 520 hours of DLS~~After 1560 hours of DLS~~, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five (5) years after the date of the onset of the injury or illness for which the employee is claiming DLS.
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Proposed Language:

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THE CITY OF SAN JOSE

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FOR THE CITY:

FOR OE#3:

Jennifer Schembri
Office of Employee Relations

Date

Bill Pope
International Union of Operating
Engineers, Local No. 3 (OE#3)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

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LAYOFF

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Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) agree to discuss the Supplemental Retiree Benefit Reserve (SRBR) program in the Federated City Employees' Retirement System.

Either the City or OE#3 may provide notice to the other of its request to discuss the SRBR program. Upon such notice, the parties shall continue these discussions within ten (10) calendar days after the City or OE#3 receives notice from the other.

To the extent that any change to the SRBR program is a mandatory subject of bargaining, the City and OE#3 shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached on those issues that are a mandatory subject of bargaining, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. In such event, neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR OE#3:

Jennifer Schembri
Office of Employee Relations

Date _____

Bill Pope
International Union of Operating
Engineers, Local No. 3 (OE#3)

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3)

SICK LEAVE PAYOFF

The City and the International Union of Operating Engineers, Local No. 3 (OE#3) agree to continue meeting and conferring on sick leave payoff (Article 18.2 through 18.4) for current and future employees.

Either the City or OE#3 may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or OE#3 receives notice from the other. The City and OE#3 shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, either party may invoke the impasse procedures in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367. The parties understand that this means that, notwithstanding any other provision in any successor Memorandum of Agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. In such event, neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor agreement between the City and OE#3.

FOR THE CITY:

FOR OE#3:

Jennifer Schembri Date
Office of Employee Relations

Bill Pope Date
International Union of Operating
Engineers, Local No. 3 (OE#3)